DOCUMENT RESUME

ED 026 489 VT 006 616

By-Berkowitz, Monroe

Rehabilitating the Disabled Worker: A Platform for Action in New Jersey.

Rutgers, The State Univ., New Brunswich, N.J. Bureau of Economic Research.
Spons Agency-Vocational Rehabilitation Administration (DHEW), Washington, D.C.
Pub Date 65
Note-60p.; Report of the New Jersey Institute on Workmen's Compensation, Rehabilitation, and Employment (Trenton, March 3-5, 1964).
EDRS Price MF-$0.50 HC-$3.10
Descriptors-*Administrative Problems, *Conference Reports, Court Litigation, Employment Problems, *Handicapped, *Industrial Personnel, Legal Problems, Medical Services, Program Administration, Vocational Rehabilitation
Identifiers-New Jersey Institute Workmens Compensation Rehabi

Individuals of varying backgrounds, viewpoints, and interests met at Trenton, New Jersey, March 3-5, in a conference conducted by the state Rehabilitation Commission, Division of Workmen's Compensation, and the Division of Employment Security of the Department of Labor and Industry in cooperation with the National Institutes on Rehabilitation and Health Services to discuss the best means of rehabilitating workers disables by industrial accidents and disease. The report includes six chapters of a discussion leader, recorder, and 15 to 20 members representing groups concerned with the subject under discussion. Chapter headings are (1) "A Broad Look at Workmen's Compensation and Rehabilitation in New Jersey." (2) "Litigation as a Barrier to Rehabilitation," (3) "Administration of Workmen's Compensation and Rehabilitation," (4) "Supervision of Medical and Rehabilitation Services," (5) "Rehabilitation Facilities and Personnel," and (6) "Employment Problems of the Handicapped." (JK)

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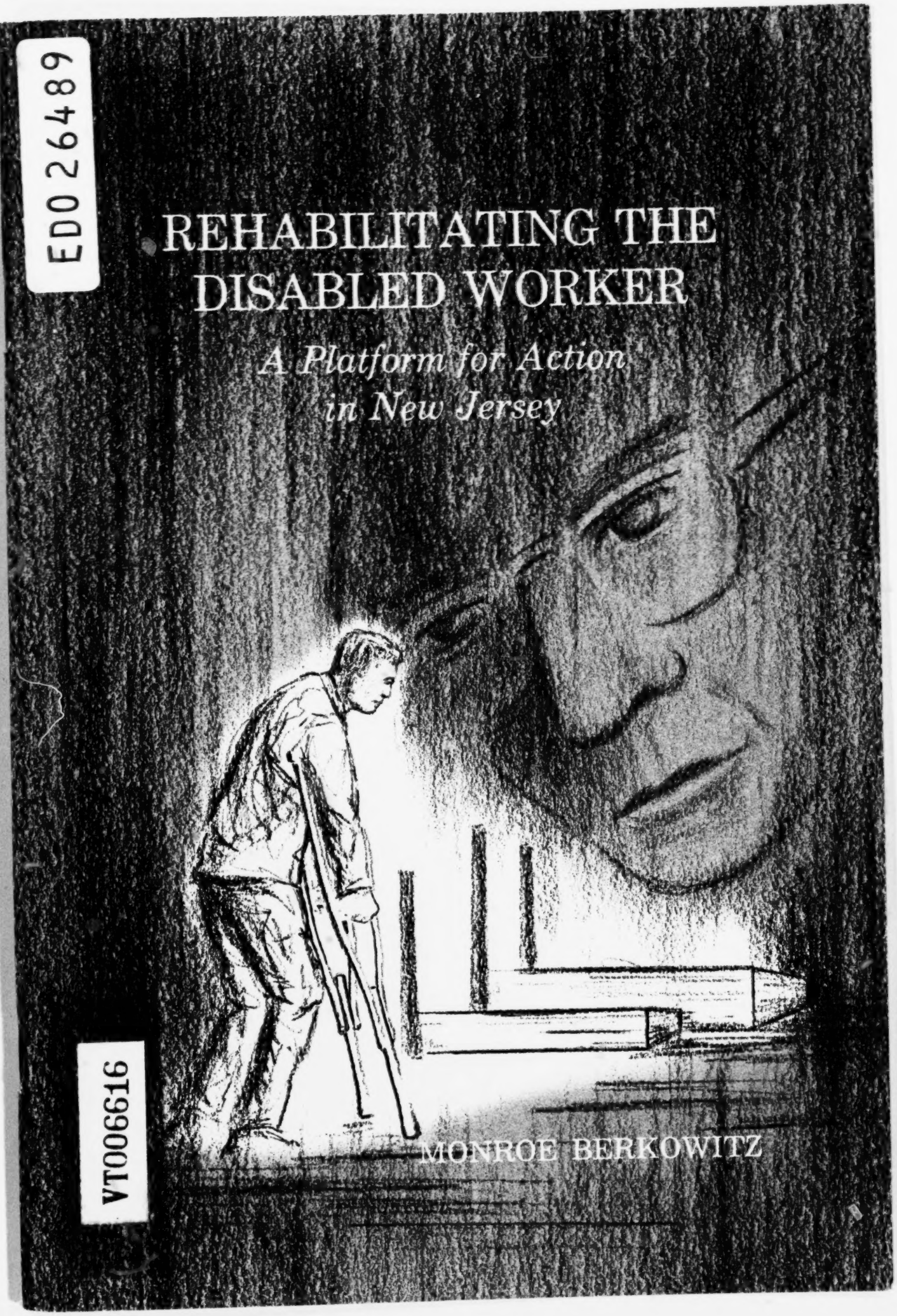
A Platform for Action in New Jersey



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REHABILITATING THE DISABLED WORKER

A Platform for Action in New Jersey

Report of the
New Jersey Institute on Workmen's Compensation, Rehabilitation, and Employment

MONROE BERKOWITZ, *Editor*

BUREAU OF ECONOMIC RESEARCH
Rutgers—The State University, New Brunswick, N.J.

This is the report of the New Jersey Institute on Workmen's Compensation, Rehabilitation, and Employment; Trenton, New Jersey, March 3-5, 1964; conducted by the New Jersey Rehabilitation Commission, Division of Workmen's Compensation, and the Division of Employment Security of the Department of Labor and Industry in cooperation with the National Institutes on Rehabilitation and Health Services. The report was compiled from prepared papers presented by seminar groups at the Institute. The contents represent a composite viewpoint based on the thoughtful deliberations of the participants. The report does not necessarily reflect standards, policies, or practices either approved or recommended by the co-sponsors, or any participating organization or agency.

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The conference in all its phases, from planning to final publication of this report, was supported by:

The National Institutes on Rehabilitation and Health Services
Terence E. Carroll, Director

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The expenses of the conference and of this publication were defrayed in part by a grant from The Vocational Rehabilitation Administration, U.S. Department of Health, Education, and Welfare, Washington, D.C.

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Foreword

In March, 1964, at Trenton, the capital city of New Jersey, people with varying backgrounds, points of view, and interests, came together for several days of intensive discussion about the problem of how best to provide rehabilitation to workers disabled by industrial accidents and disease. Called the New Jersey Institute on Workmen's Compensation, Rehabilitation, and Employment, this state conference was patterned after and received impetus from a similar national meeting held at the University of Michigan in 1962.

Because the program of vocational rehabilitation looms so large in the planning for increased emphasis on rehabilitation under workmen's compensation, the purpose of the New Jersey Institute was to bring about a better understanding of some of the barriers to effective coordination and cooperation, possible improvements, and availability of rehabilitation and of employment services. Also, it hoped to define ways in which to achieve closer cooperation between agencies of local, state, and Federal government; the legal and medical professions; and rehabilitation facilities, management, labor, and insurance interests.

This was an action conference as well as a study conference. After welcoming remarks from representatives of state government and an address by Miss Mary Switzer, commissioner of the U. S. Vocational Rehabilitation Administration, the Institute was divided into six workshop panels. Each workshop group included a discussion leader, a recorder, and 15 to 20 participants representing the various interest groups concerned with rehabilitation and workmen's compensation.

All workshop groups came together again on the last afternoon of the Institute when the recommendations of each were reported to the whole conference for comment and discussion.

Days before the Institute began, each participant was sent a set of study papers, most of which were prepared specifically for the Institute. This better prepared the members of the workshop groups who worked hard, meeting mornings and afternoons in the newly opened Labor and Industry Building in Trenton for a full and frank discussion of the problems and concerns that had brought them together.

As an initial step in the organization of the Institute, a Planning Committee, representative of the various interest groups, was appointed to provide direction and guidance in structuring the organization and mechanics of the meeting. In addition, technical committees were appointed to develop the materials and gather informational data for the Institute participants. Several of the members of the Planning and Technical Committees also served as resource specialists, discussion leaders, and in other key roles. Those serving in these capacities are listed in the appendix.

Much of the credit for the Institute's concentration on meaningful problems and solutions should be given to the individuals who gave of their knowledge, skill, and energies at the many planning and technical committee meetings.

Acknowledgement is also recorded here of the fine contribution Mr. Terence E. Carroll, director of the National Institutes on Rehabilitation and Health Services, made to the Institute in providing professional direction and obtaining financial support for the program.

This report follows the pattern of the workshop discussion groups at the Institute. The problems discussed in each workshop are presented in separate chapters, which also include the recommendations of each group. A detailed appendix is included in the report. This documents the widespread support from many diverse groups for the general theme, objectives, and recommendations made by the Institute participants.

In the concluding session of the Institute, the participants strongly emphasized the desirability of having both organizations and individuals implement the recommendations of the Institute in order to realize the objective of providing needed services to those who have become disabled as a result of their participation in the economic life of our state and nation.

It is with a deep sense of gratitude that we acknowledge the contributions of each of the participants, the members of the Planning Committee, the members of the Technical Committees who prepared the Institute's materials, and others who contributed so much to the success of the Institute.

THOMAS L. FRANKLIN, *Chairman*
BEATRICE HOLDERMAN, *Co-Chairman*
CHARLES REILLY, *Co-Chairman*

Introduction

NEW JERSEY has acquired a reputation as a showcase for activities aimed at improving cooperation and coordination among agencies and groups concerned with the rehabilitation of the injured worker. At the National Institute on Rehabilitation and Labor Health Services held in 1959 at Atlantic City, the blueprint was developed which the Vocational Rehabilitation Administration has been following ever since in its nationwide effort to bring about a closer understanding between organized labor and groups involved in rehabilitation and to increase the emphasis on rehabilitation within workmen's compensation systems.

Three years ago in Newark a Rehabilitation Workshop for Administrators of Prepaid Health Plans brought together key personnel from the welfare departments of large unions and from group health centers to foster an increased awareness of rehabilitation needs in consumer-sponsored health programs. In 1962 a series of rehabilitation seminars for labor leaders was conducted at Rutgers University. A demonstration project designed to develop techniques for the early identification and prompt referral for rehabilitation services of the job-injured has recently been completed by New Jersey's Division of Workmen's Compensation working jointly with the Rehabilitation Commission in the state.

While it is gratifying to state that the Vocational Rehabilitation Administration has helped support all of these endeavors, none would have been possible without the stimulating leadership from the voluntary and public agencies that New Jersey is so fortunate in having—a leadership which recognizes the merit of a cooperative approach in helping resolve the rehabilitation problem of the state's handicapped citizens.

Ten years ago the Vocational Rehabilitation Administration faced a set of broad new responsibilities to begin building a better approach to the massive problem of disability among the American people.

On August 3, 1954, when the President signed the Vocational Rehabilitation Amendments of 1954, both the public program and many of the voluntary groups were "plateauing"—

leveling off from one period of growth and not yet launched on a new one. Little programs had demonstrated their soundness and worth, but remained little programs surrounded by need for rehabilitation services on a formidable scale.

It was not a time when a major move forward could be made on a platform of "more of the same." The rehabilitation movement in the United States needed to align itself with other streams of professional, social, and economic change. Our centers of academic learning were looking beyond the cloistered life and accepting new roles to help industry, government, and science. Medicine had produced an impressive volume of new drugs, procedures, and techniques which vastly increased the potential for rehabilitation of disabled people. Demands for a more human and more modern approach to the needs of our aging citizens were heard from social, legislative, and other sources.

In a host of ways it was obvious that rehabilitation in this country would now be tested on its ability to take a responsible place in dealing with the broad problems of disability among the American people.

The legislation enacted by Congress in 1954 was tailored to this kind of situation. It had been strongly supported and influenced by the National Rehabilitation Association and by other professional and voluntary groups whose devotion to the future of rehabilitation was equal to that of government workers who had the direct responsibility. The new law represented a meeting of minds between the best talent our country possessed in this specialized field.

Paralleling the developments in rehabilitation has been a mounting interest in seeing that handicapped children and youth receive an education comparable to that available to "normal" children. Special education programs, once so universally neglected, have appeared in more and more school systems, and the number of institutional programs has grown also. The logical result has been for more school systems and programs to be concerned with what happens to these physically or mentally handicapped youngsters as they approach the end of their schooling.

Equally logical has been the convergence of vocational rehabilitation and special education interests, so that the programs function in support of each other on behalf of the handicapped youth.

Other groups of disabled persons, where the proportions receiving services had lagged tragically behind program growth generally, deserved and got special attention from state rehabilitation agencies during this period.

One such group was the deaf. Despite intensive efforts over a long period of time, the communication barrier never was lowered enough to permit large numbers of the deaf to sur-

mount their handicaps, secure suitable jobs, and live successfully. Now, with special efforts, with the fruits of numerous research projects to bolster our knowledge and methods, and with a training program to produce more professional workers skilled in this difficult problem, the tide is beginning to turn.

From a higher level of achievement, the rehabilitation program faces the future and its own set of distinctive challenges with confidence—confidence based on a mandate given by President Johnson in his 1964 Health Message to Congress:

> **Disability—always a cruel burden—has partly succumbed to medical progress. Our federal-state program of vocational rehabilitation has been demonstrating this fact for more than 40 years. Rehabilitaion can help restore productivity and independence to millions of Americans who have been victims of serious illness and injury. Over 110,000 disabled men and women were returned to activity and jobs last year alone.**
>
> **If more fully developed and supported by the states and the Federal Government, this program can be a powerful tool in combating poverty and unemployment among the millions of our citizens who face vocational handicaps which they cannot surmount without specialized help.**
>
> **I have already recommended appropriation of increased federal funds for vocational rehabilitation.**
>
> **I now recommend enactment of legislation. . . .**

In foreign countries, too, our Division of International Activities is engaged in developing many exciting research projects in places like India and Israel. This research is being financed through the sale of agricultural surpluses abroad and is all a part of what might be termed a world crusade against disability.

The Vocational Rehabilitation Administration needs all the talent it can summon from all available sources to sustain the rehabilitation effort, and it is seeking this talent from virtually every profession and knowledgeable group. Teams of experts are being developed across the country in special research and training centers established by VRA at large universities, such as the one at New York University. Millions of dollars are going into VRA-supported training programs to increase the woefully inadequate supply of professional and technical personnel needed in the field of rehabilitation.

Welfare that increases dependency is bad public policy. The growing burden of dependency is becoming an intolerable one, and it is a national problem that demands the prompt and thoughtful attention of all of us. It is truly an anachronism that the cancer of poverty in the year 1964 exists here in a country as affluent as ours. But it is a sad reality that many of our

people are in dire want, and, as with cancer, these insidious pockets of poverty must be destroyed.

No one is against rehabilitation; it is supported by liberals and conservatives alike. One reason for this is the obvious economic advantage to be gained through providing services required by the vocationally disabled to restore them to gainful employment. Also, disability strikes at all strata of our society; it respects no one.

Last year more than 110,000 disabled people were rehabilitated through the state-federal program of vocational rehabilitation. The goal for 1964 exceeds 120,000. Of the total rehabilitations in 1963, about 19,000 people had been on public assistance or were residing in tax-supported institutions. Public assistance payments alone to this group totaled more than $16-million a year, yet the cost for rehabilitating them amounted to a one-year outlay of approximately $19-million. In terms of earnings, the wages of these disabled people rose from $45-million annually prior to rehabilitation to $232-million after rehabilitation. It is estimated that over the remainder of their lives these handicapped individuals will return seven dollars to the U. S. Treasury in income taxes for every federal dollar invested in their rehabilitation.

New Jersey has the structure and the organization, as well as the commitment and dedication, necessary to carry out the mission of helping physically and mentally disabled people become rehabilitated. This conference on workmen's compensation, rehabilitation, and employment is just one tangible example among many of this kind of dedication and commitment. It is truly symbolic of an awareness that rehabilitation is everyone's responsibility. Actually, it is part of our constitutional commitment to equal opportunity for all Americans.

MARY E. SWITZER
Commissioner of Vocational Rehabilitation

Chapter I

A Broad Look at Workmen's Compensation And Rehabilitation in New Jersey

Early History

NEW JERSEY is a state with a heritage of concern for the injured workman. Although it is not easy to disentangle conflicting claims, it is fair to state that New Jersey's Workmen's Compensation Law is the oldest statute in point of enactment that has remained in effect.

It was on April 4, 1911, that New Jersey's Governor Woodrow Wilson signed a bill establishing a workmen's compensation law that was to become effective on July 4, 1911. Much of the groundwork for the bill had been laid under the prior administration of Governor Walter Edge. As a matter of fact, New Jersey's interest in the injured workman extends back at least to 1897. In that year New Jersey's Bureau of Statistics and Records began publishing reports on the experience of foreign countries with compensation legislation, on the legal status of the New Jersey employer's responsibility for industrial injuries, and on desired remedial legislation.[1]

New Jersey is also a pioneer state in rehabilitating the injured workman. New Jersey's first rehabilitation law, passed in 1919, covered all physically disabled persons who were, or might be expected to become, totally or partially incapacitated for remunerative employment. Significantly, the term rehabilitation was construed to include physical restoration as well as vocational training and placement. Thus, from the very begin-

[1] Much of the early history of workmen's compensation in New Jersey is covered in Monroe Berkowitz, *Workmen's Compensation, The New Jersey Experience* (New Brunswick: Rutgers University Press, 1960). See especially chapters one, six, and eight.

ning the rehabilitation efforts in New Jersey did not make any artificial distinction between physical restoration on one hand and guidance, training, and placement activities on the other.

In spite of the fact that the rehabilitation law in the state of New Jersey was broadly oriented and covered disabilities other than those caused by employment conditions, there was a close, intimate, and direct relationship between the Rehabilitation Commission and the Workmen's Compensation Division. The closeness of these two agencies needs to be emphasized over and over again because New Jersey had achieved by 1919 what some states are attempting to achieve today. In 1919 the first state Diagnostic Industrial Surgical Clinic was opened in Newark in the same building that housed the Workmen's Compensation hearing rooms and the Employment Service. This clinic was under the direction of a medical advisor whose salary was paid partly by the Rehabilitation Commission and partly by the Department of Labor, because he also advised on compensation matters.

According to Commissioner of Labor Lewis Bryant, whose pioneering efforts resulted in the close coordination among the agencies, if a worker came into the compensation center to review the financial adequacy of a settlement, he would be examined, not only to determine the correctness of the cash indemnity payment, but also to determine whether an improvement in his condition could be accomplished by reconstruction surgery. In 1920 Commissioner Bryant, reporting on rehabilitation in New Jersey to the International Association of Industrial Accident Boards and Commissions, the professional organization of compensation administrators, stated, "It is our . . . purpose to have at these gatherings a representative of the training section of the rehabilitation operation so that the problem of return to industry of each injured worker may be studied by the expert and followed-up either by vocational training or intelligent placement of the worker in the industrial occupation which he is physically, mentally, and, by past experience, best capable of filling."

The story of the clinic has been told elsewhere, and the details need not be repeated here. By 1922 four additional clinics were established in conjunction with the compensation centers in Jersey City, Camden, Trenton, and Paterson. In 1927 an occupational therapy unit, known as the Curative Workshop, was established in conjunction with the Newark clinic.

New Jersey's Dr. Henry H. Kessler, internationally known for his work in rehabilitation, has often commented on the fact that the broad objectives sought today had some of their inceptions in New Jersey in the 1920's.

The achievements of New Jersey in this field have not been continuous, however. For a variety of reasons the compensation

programs and the rehabilitation programs grew apart. By 1945 the Rehabilitation-Compensation Clinics were abandoned. It has been only in the last several years that the two agencies have worked cooperatively to achieve what traditionally is the goal of workmen's compensation; that of rehabilitating the injured workman. A good portion of the energies of the conference panel participants was directed to providing ways and means of effectively establishing this primary goal in the workmen's compensation program.

In 1956 a program was initiated to improve efforts to rehabilitate workmen's compensation claimants. A person was assigned within the Division of Workmen's Compensation to review the referrals being made by the hearing officials to the Rehabilitation Commission. This person also reviewed the disposition of those cases that had already been referred to the Rehabilitation Commission. As a result, it was determined that there was obviously a need to facilitate cooperation between the two agencies.

A Vocational Rehabilitation Administration pilot project was started in 1959 to demonstrate how industrially injured workmen might be effectively rehabilitated through the cooperation of the Rehabilitation Commission, the Workmen's Compensation Division, social workers, insurance carriers, physicians, and lawyers.[2] The outstanding results obtained in this pilot program led in 1963 to the establishment of a Rehabilitation Unit in the Division of Workmen's Compensation to serve industrially injured workmen. Through the work of this unit, 201 industrially injured workmen were able to return to remunerative employment in 1964. Their first year's earnings are estimated at $768,820.

Coverage

New Jersey's enabling legislation is broad in its coverage. Because of constitutional doubts in 1911 when the original law was passed, employers and employees are given the option of contracting out and not being covered by the law. Because the alternatives are not very palatable (employers remain liable for suit under the common law with two of the common law defenses removed), election not to be covered under the law by employers or employees is virtually nonexistent.

New Jersey's law covers a higher proportion of the labor force than laws in most other jurisdictions. There are no exemptions for employees who work in small establishments; therefore employers who employ but a single worker are covered under the law. Virtually all employees are covered with the ex-

[2] The final report of this project is contained in John Ellis, *A Demonstration of Workmen's Compensation Rehabilitation Cooperation*, (Trenton: N. J. Dept. of Labor and Industry, 1963).

ception of casual workers, and the law is very restrictive in defining these. Babysitters and occasional household help qualify as employees under the law. Agricultural workers and domestic workers, however, are not required to be insured.

There are, undoubtedly, many persons who have been employers under the New Jersey statute who are not aware of their potential liability in the event of an accidental injury. Most jurisdictions cover all accidental injuries that are industrially connected, but New Jersey, together with 33 other jurisdictions, provides full coverage for all occupational diseases which are considered in the same way as accidental injuries.[3]

Financing

In New Jersey it is mandatory for all employers, with the exceptions noted previously, to insure their liability for possible workmen's compensation payments with a private insurance company, or provide evidence of their own ability to self-insure. New Jersey has neither a competitive nor an exclusive state insurance fund for workmen's compensation. Eight states have such an exclusive state insurance fund for workmen's compensation; eleven states have competitive funds.

In the country as a whole, roughly speaking, only about 60% of the insurance premiums paid to commercial underwriters of workmen's compensation insurance is returned to the workers in the form of either cash benefits, or medical and other services. Approximately 40% is allocated for the various expenses of the private insurance carriers. These percentages are comparable in New Jersey. The compensation paid by insurance carriers in the state during 1962 was $42,151,360. This figure does not include hospital and medical expenses, and it refers to the payments actually disbursed in the calendar year.

It is obvious that a particular case, settled in any one year, may call for eventual payments which are greater than the amount disbursed during any one calendar year. Consequently, insurance carriers compute what are called "incurred losses" which include the reserve set aside to cover contingent future medical expenses and permanent disability awards. In 1962 incurred losses amounted to $69,824,000. This was 58.4% of premiums totalling $119,571,000 earned in that year. This loss ratio of 58.4% is only slightly greater than the comparable ratio for 1961 and below the ratios for the four preceeding years.

It is true that in no other social insurance program is such a low porportion of costs returned to workers in the form of benefits. However, it is also true that a high proportion of the premiums are allocated for services and protective benefits. In New

[3] A basic source of information about provisions of the laws of the several jurisdictions is U. S. Department of Labor, Bureau of Labor Standards, State Workmen's Compensation Laws, *Bulletin 161.* This Bulletin is revised periodically to show changes in statutory provisions.

Jersey 17.5% of the premium is allowed for acquisition expenses, commission and brokerage fees; 3.7% is allowed for taxes; 8.2% for claims investigations and adjustment expenses; 2.47% for safety inspection; 6.11% for home office expenses; 1.86% for payroll audit, and the remaining 2.25% for the standard loading for profit purposes. An employer who buys private insurance turns to the carrier for information and consultin services. He may inquire about the compensation law, his liability, the protection afforded under the law, and how the various prospective merit-rating plans work. In case of an accident the insurance representative may take over the burden of processing the claim and investigating the circumstances to avoid a repetition of the event which led to the accident.

Self-insurers, of course, do not have the acquisition expenses, expenses for taxes, or allocations for profit separate from their regular financial structure. However, they still have the expense involved in safety inspections, claims, and various administrative expenses, although these may not be separately budgeted and, hence, not separately identifiable.

In 1964, 2,890 people were rehabilitated by the New Jersey Rehabilitation Commission. Of this number, 201 had been industrially injured. During that time, 8,890 persons were receiving on-going restorative or training rehabilitation services. A total of 15,000 persons received some rehabilitation services.

It is estimated that the 2,890 persons rehabilitated last year represent wage earnings in excess of $7,500,000 the first year after their rehabilitation. For every dollar spent on rehabilitaton, it is estimated a $10 return in taxes is made. The Commission's 1964 budget of $2,817,318 was composed of $1-525,383 federal and $1,291,935 state funds.

The Vocational Rehabilitaton program is a federal-state partnership in rehabilitating the physically and mentally handicapped. The program requires concentrated, coordinated effort. It is a state and community responsibility. Its dividends are significant in terms of personal dignity for the individual as a productive, independent member of society.

In 1962, 56,314 compensated cases were closed by the Division of Workmen's Compensation. A total of $50,635,729 was either awarded injured workers by the hearing officials or voluntarily paid by employers or their insurance carriers. This does not reflect the complete cost of medical care provided by employers and insurance carriers since almost all of these costs are not available. If we assume that what is true nationally is also true in New Jersey (about ⅔ of total costs are cash indemnity payments and about ⅓ are medical costs), the total cost of compensation in the state in 1962 was approximately $75,000,000.

New Jersey is distinguished from many other states in that a higher proportion of its cases are settled at the formal hearing stage. In 1962 there were 22,468 formal dispositions, or 39.9%

of all closed compensated cases. A total of 12,153 dispositions, or 21.6% of all cases, were closed by voluntary payments made as a result of informal hearings. During that year, 21,693 dispositions, or 38.5% of all compensated cases, were closed by voluntary payments made through direct settlements. A little over half of these, or 55.4%, reflect payments for temporary disability exclusively.[4]

Of the total awards of $50.6-million in 1962, $33.8-million was awarded at the formal level, $7.0-million in formal hearing settlements, and $9.8-million at the direct payment stage. Taking 1946 as equal to 100, the comparable index for 1962 is 404.0. In other words there has been an increase of over 300% in the dollar awards at the formal hearing level. This is in contrast to an increase of 30% at the direct settlement stage. Nothing happening in workmen's compensation is lessening the significance of awards at the formal level.

At the same time it should be pointed out that a substantial portion of the cases closed at the formal level was the result of settlements made either at a pre-trial conference or after placement on the trial list. Cases listed as closed at the formal level were possibly only a small percentage of those closed after a fully-litigated trial in which there was a genuine dispute. However, a formal hearing, whether issues are in dispute or not, entails a stenographic record which includes the testimony of the petitioner, medical experts of both parties, and such other witnesses as may be offered. When the workmen's compensation act was passed, it was thought that most of the cases would be settled voluntarily once the standards were set in the law. Actually, as can be seen, relatively few of the cases are settled at the direct settlement stage. This has a bearing on the whole problem of rehabilitation. Once the case proceeds further than this, more time is necessary and the resulting hearings may have an adverse effect on the rehabilitation potential of the injured workman. This phenomena will be discussed later when the effects of litigation on rehabilitation potential are considered.

Review of Direct Settlements

If one reviews the early history of the workmen's compensation law, it is apparent that the drafters of the statute had the idea that almost all cases would be settled at the direct settlement level. The schedule of benefits for the various parts of the body was provided in the law. The employer was to be held liable without necessity of showing fault, and it was assumed that most cases would be settled automatically upon showing of an injury

[4] Data on closed compensation cases are found in the annual reports of the Division of Workmen's Compensation. The 1962 annual report covers dates from that calendar year. Information on the insurance aspects of the program is contained in the annual reports of the Compensation, Rating, and Inspection Bureau of New Jersey, an instrumentality of the State of New Jersey under the supervision of the Commissioner of Banking and Insurance. The New Jersey Rehabilitation Commission's annual reports contain information concerning the number and characteristics of persons rehabilitated during the year.

by the employee. For years afterward the majority of the cases were settled at the first stage where the employer and the employee made a settlement without benefit of any intervention by the Workmen's Compensation Agency. Once the settlement was reduced to writing, it was sent to the Workmen's Compensation Agency which gave it only a cursory glance. The result was, according to the Division of Workmen's Compensation, "the equivalent of rubber stamp approval of such settlements."

In January of 1958 the Division began the Direct Settlement Review Program. Clerical personnel in the central office examined reports of direct settlements submitted for filing by the employers and carriers. Those reports which indicated further inquiry was necessary were sent to a referee for review. At the present time several referees are assigned to assist the one supervising referee in charge of the program.

If a referee, based upon the report of the settlement, feels that settlement is adequate, he closes the matter at this stage. If he concludes differently, the matter is scheduled for a special informal hearing. The referee has the benefit of all medical reports; his personal observations, plus any information he may gain by questioning the injured worker. He also has the views of the employer and his representative. After gathering all relevant data, the referee then makes a judgment as to whether the award is adequate or whether the extent of disability is greater than originally reported. If the disability is greater, he would recommend that additional compensation be paid. If either party chooses not to accept the referee's conclusion, then the injured worker is advised that he is entitled to file for a formal hearing.

It is significant that when the program began in 1958, out of 5,012 cases reviewed, 3,279 (about two out of three) were considered inadequate and were listed for hearings. Of these cases, 1,440 resulted in additional cash payments following the hearing.

These percentages were reversed by 1961. During that year, out of nearly twice as many cases reviewed, approximately two out of three were considered adequate. Nevertheless, in 1961, 1,717 cases received additional cash payments following hearings. The percentage considered adequate in 1962 was even greater. Four out of every five cases reviewed were considered to be adequate from the record, a drastic change from 1958.

The full dividends of this Direct Settlement Review Program cannot be expressed in statistics alone. It comes as close as anything in New Jersey to a review by the administrative agency of the adequacy of medical treatment as well as cash benefits. As will be noted in Chapter III, there are no agreed upon procedures within the Division for a regular and routine review of a case in general or to determine the adequacy of the medical treatment received. The Direct Settlement Review Program has resulted in the type of review which many feel should be routine in the Workmen's Compensation Agency.

Although direct settlement as a method of disposition has been steadily declining in importance over the last 20 years, there has not been a substantial change in the proportion of cases resolved by this method since this review program began in 1958.

On the one hand it is a source of gratification that the Direct Settlement Review program has influenced positively the number of these direct settlements. On the other hand it has not resulted in a significant reduction in the number of cases which go through the fully-litigated stages, and this can be a problem in the early rehabilitation of the injured workman.

Permanent Partials

It's commonplace to note that in New Jersey a significantly high percentage of the cases result in permanent partial-disability awards. An article in the *Journal of Insurance* (March 1964) quotes the analysis of the New Jersey Manufacturers' Association: "During a recent year, 82¢ of every dollar was in payment for permanent partial-disability to injured workers who had returned to some form of employment. Only 18¢ of the dollar was paid to those unable to work, either through temporary or permanent total-disability or paid to the dependents in the form of death benefits. Furthermore, ⅔ of both the cost and the number of permanent partial-disability cases were for disabilities classified as *minor*." There can be no escaping the fact that under the New Jersey system, which places such emphasis on whole-man theory, physical disability is compensated as such. The result is that a high proportion of the awards result in permanent partial-disability payments.

Of the 56,314 closed compensated cases in 1962, fortunately only 262 involved fatalities. Permanent total-disability cases were an even smaller number, only 67. But 43,704 cases involved permanent partial-disability. Only 12,281 cases involved temporary disabilities with no further award for permanent disability. The record in other states is quite different. At the same time it should be noted that in New Jersey the average award in permanent partial-disability cases tends to be among the lowest of any state jurisdiction.

Unfortunately, most of the discussion of workmen's compensation in New Jersey has tended to center around two items. One is the level of benefits and the other is the number of permanent partial-disability awards, or at least the proportion that these awards bear to the total number of awards made each year.

The benefit levels and the dispositions made of the compensation dollar are, of course, of over-riding importance. But concern over these matters should not block consideration of the significant problems relating to the rehabilitation of the worker. One of the refreshing things about the New Jersey Institute was an attempt to isolate and discuss some of these other problems.

Chapter II

Litigation as a Barrier To Rehabilitation

Issues in Litigation

THE ISSUES which give rise to litigation requiring administrative or judicial decision in workmen's compensation cases can be grouped into two very broad categories. The first of these includes those controversial issues normally raised by the employer or carrier which relate to the liability of the employer, whether the accident arose in the course of employment, and whether there was a causal relationship between the accident or the occupational exposure and the disability.

The second broad category relates to the whole question of the nature and extent of disability. Permanent partial-awards in New Jersey constitute a higher percentage of cases than in probably any other state. This, in part, is one reason for the continuing importance of the litigated area.

It must not be forgotten that for years the Workmen's Compensation Division did almost nothing in the way of supervising direct settlements. It did not take into consideration the welfare of the worker and whether or not he was getting the correct amount when his employer settled the case. Consequently, the astute workman found it to his advantage to secure the services of a lawyer and to prosecute his case at the formal level. With the Workmen's Compensation Division abandoning its supervisory role early in the game, the plaintiff's attorney stepped in and saw to it that the worker received what he was entitled to under the act. More than that, the ardent prosecution of cases tended to establish standards by which the cases were handled and settled, and this has led to much decisional progress in improving the scope and coverage of the law. All this can be attributed to the persistent efforts of claimants' attorneys.

Possible Effects of Litigation on Rehabilitation

But there are difficulties created by litigation and these difficulties were essentially the subject of concern of the Institute's panel on *Litigation as a Barrier to Rehabilitation.* Excessive litigation inhibits the rehabilitation process. First of all it inhibits the speed by which services are provided to the claimant. If the payment for services is uncertain, then services of a nonemergency nature will be delayed until the questions have been resolved. Rehabilitation experts emphasize that the process of rehabilitation is most successful when it starts early in the course of disability, with "first aid" in the case of injury. Delays in starting rehabilitation prolong recovery and limit extent.

The litigated settlement frequently guarantees that a delay will take place. The law in New Jersey provides that an award on permanent disability, either total or partial, need not be made until 26 weeks after either the accident, the final act of medical treatment, or the employee's return to work. This delay until the injury stabilizes is well worthwhile from the point of view of avoiding premature assessment of disability, but it may be disastrous if it delays the rehabilitation process.

Delay is not the only obstacle which litigation may pose for rehabilitation. Dr. Leon Lewis in a paper entitled "The Social Dynamics in Medical Aspects of Workmen's Compensation" [1] pointed out that the difficulty is that the context of medical care becomes forensic rather than clinical. "There is a tendency for diagnosis, therapy, and prognosis to be formulated with the future hearing in mind," he said, "rather than the return of the claimant to productive employment." Dr. Lewis noted that it may be necessary to unfreeze the pattern of law which has saddled this country with a system designed for a simple injury and short-time disability but not able to serve the seriously disabled who require a multiplicity of services for adequate restoration.

A third possible deterrent is that litigation may tend to encourage the worker to demonstrate the maximum amount of his dependence until the claim has been settled. The American Public Health Association points out that since the claimant must prove disability he tends to believe in it himself.[2]

Some people have complained that it is not feasible to graft onto an essentially forensic system a rehabilitation consciousness, but surely this is a counsel of despair. The thinking of the panel devoted to this topic was not so pessimistic. It was felt that many things could be done, given the existing framework, to achieve the goal of rehabilitating the workers and restoring them to the maximum physical, economic, and social usefulness to which they are capable.

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[1] Dr. Lewis' paper is summarized in *Rehabilitating the Disabled Worker, A Platform for Action* (Washington, D. C.: Vocational Rehabilitation Administration, U. S. Department of Health, Education, and Welfare). See p. 48.

[2] *Rehabilitating the Disabled Worker, A Platform for Action,* p. 49.

Cases Where Liability is Questioned

Most compensation cases are litigated because of disputes over the nature and extent of disability. However, there is a troublesome and small minority of cases which assume importance far out of proportion to their numbers. These are the cases in which the employer contests liability, either because of the contention that the accident did not arise out of and in the course of employment, or because it is contended there was no causal relationship between the accident and the resulting disability. The Michigan workmen's compensation-rehabilitation conference recommended that in cases where there is a color of right, the rehabilitation of the worker should begin immediately if it is indicated, regardless of the eventual fixing of liability. It was also felt that the rehabilitation program should be under the supervision of the Workmen's Compensation Agency and that a fund ought to be established, supported by legislative and government appropriation, which would provide for payment of medical and rehabilitation services in cases where there was controversy over liability. The employer or carrier, if eventually held liable, would reimburse the fund for expenditures made on behalf of the worker.

The Institute's panel felt that this idea had merit but that there might be alternative solutions in New Jersey. It was recognized, for example, that one way to minimize the effects of these cases is to see to it that any disputes about liability or causal relationship are promptly heard. The panel recommended that appropriations for the Workmen's Compensation Division be increased to permit adequate staffing and sufficient resources so that cases could be heard soon after they are brought to the attention of the Division.

It was pointed out that the Rehabilitation Commission, in appropriate cases, stands ready to provide medical care. In this respect the panel urged the State Legislature to appropriate sufficient monies to the Rehabilitation Commission so that it can afford the maximum service to the injured workmen. In cases where the Rehabilitation Commission does provide medical care, if the carrier or employers are eventually liable, they would be expected to reimburse the Commission for the outlays which it incurred. The position of the Rehabilitation Commission in cases of this sort is not widely understood, and it was recommended that due publicity be given to it so that the facilities of the Commission can be more fully utilized in appropriate cases.

In certain cases the worker who is unable to pay may, of necessity, have to rely on community facilities for treatment and hospital care. In any case, whatever else is done, it is obviously desirable for the Workmen's Compensation Division to give precedence to motions for temporary disability and medical treatment. Members of the panel recognized that the Division has

administrative problems in this regard which may be solved by increased financial support.

TDI vs. Workmen's Compensation

New Jersey is fortunate in being one of four states which has a program of Temporary Disability Insurance. This provides weekly cash benefits to employees who are disabled by reason of illness or non-work connected injuries. A disabled worker should find himself entitled to temporary disability payments either from the TDI or Workmen's Compensation. It is an irony of our fractionated approach to the social insurances that, at times, a worker may find himself between the two agencies as it were. He may be unable to collect from either program because of doubts as to which program should pay him. The panel felt that there is definite need for immediate clarification of this situation and that in doubtful cases where compensation liability is in question, the worker should be able to receive TDI benefits with the right of reimbursement thereafter from the compensation carrier if the matter is ultimately compensable.

The Role of the Attorneys

Since litigation involves the attorney, it is thought that sometimes the attorney is responsible for the litigious atmosphere and that by inference he is interfering with the rehabilitation process. The panel recognized that litigation in and of itself is not a barrier to rehabilitation, but only if improper attitudes are exhibited. In its view litigation can be an aid to rehabilitation when the client has an adviser in whom he has confidence. If the lawyer gives proper advice as to the desirability of submitting to rehabilitation, this may overcome whatever reticence the worker may have to acccept such a program.

It is the nature of compensation practice that attorneys find it profitable only if they specialize in it. The panel agreed that it is erroneous to maintain that a few attorneys "monopolize" the practice of workmen's compensation, but it was agreed that there are attorneys who specialize in this area. In a sense this is a great advantage. The experienced practitioner, who has become adept at exploring the law for the benefit of the client and who has become thoroughly conversant with the rules of the game in so far as disability evaluation is concerned, can also be enlightened as to other aspects of the compensation law. This would specifically include the necessity for early and adequate medical care. In the opinion of the panel, the specialist in workmen's compensation should be prepared to do all he can to enhance his client's progress toward medical and vocational rehabilitation.

New Jersey is one jurisdiction in which the attorney's fees for handling workmen's compensation matters are strictly gov-

erned by the judgment of the Division. No attorney may accept a fee other than that allowed to him by the Division, and the earning of the fee is dependent on the successful prosecution of the client's claim. If unsuccessful, the attorney receives no compensation for his services.

In 1962 the fees allowed to claimant's attorneys and to claimant's medical experts, who submitted reports or testified as to the nature and extent of the injury and causal relationship, totalled approximately 19.7% of the amount of compensation upon which fees were fixed. This would exclude prior payments of compensation benefits which were made pursuant to a timely offer and tender. The total attorneys' fees amounted to 16.8% of the amount of compensation upon which fees were fixed. Seven per cent of this was paid by the petitioner and 9.9% was assessed against the respondent. Counsel's fee may not exceed 20% of the judgment, and allowances for the medical witnesses' fees are limited both by statute and official administrative policy.

Obviously this close control of attorneys' fees can be adapted as a sanction against attorneys who do not represent their clients to the best and fullest degree. This would include not only their representation in securing maximum cash awards but also in representing their interests in so far as rehabilitation is concerned.

The panel agreed that attorneys have made a valuable contribution in the field of decisional law. It was unanimously felt that the primary obligation of an attorney is to make sure that the client receives adequate medical care and an effective program of rehabilitation. In order to encourage this attitude on the part of the practitioners, it was recommended that the legal fees be computed to have the best possible effect on the provision of medical and rehabilitation services.

The attorney to whom a worker comes for advice on workmen's compensation is obviously in a strategic position. If medical treatment is needed or if a rehabilitation process should begin, he is in a position of trust and confidence and his advice to the worker is likely to be followed. The panel agreed that some legal practitioners file claim petitions without first obtaining the medical reports. This may be advisable from the point of view of protecting the employee's legal interests, but it may be detrimental to whatever efforts made toward his eventual restoration to the job. The panel agreed that a rule should be promulgated prohibiting the filing of any petition, except under unusual circumstances such as the running of the statue of limitations, unless medical information has been obtained beforehand by the attorney.

Exchange of Medical Information

The committee also recommended that changes be made to assure free exchange of medical information. Specifically, on request of the petitioner's attorney, reports relating to the medical

treatment of the injured worker should be provided by the carrier as a matter of right. The committee also recommended that the carriers have the same right of access to information in custody of the injured worker's personal physician or attorney. This process of exchange should be carried out through the medium of the Division with the active cooperation of all interested parties, particularly the medical profession. It was felt that the free exchange of medical information at an early stage of the process might do much to eliminate disputes and to minimize whatever deleterious effects the litigation process might have on the rehabilitation potential of the worker.

The Problem of the Industrially Disabled Puerto Rican Worker

A special problem is posed by the rehabilitation of the industrially disabled Puerto Rican worker who has emigrated as a permanent worker or who is temporarily employed under contract. The panel felt that many Puerto Ricans who are industrially disabled in New Jersey return to Puerto Rico, possibly because of inability to support themselves here. Claims for compensation may be subsequently filed and raise problems of transportation for the purpose of examination and hearing. The panel agreed that all parties to the process should lend their efforts to facilitating the medical examinations of the petitioners for treatment for trial purposes within the Commonwealth, or within New Jersey. Where necessary the State Insurance Fund of Puerto Rico should defray transportation expenses for an injured client under such circumstances with the right to reimbursement under law (through an amendment of the statute) upon successful completion of the trial.

There is also a problem of communication with the Spanish speaking Puerto Ricans which seriously impedes the handling and processing of cases. In certain hearing centers, the Commonwealth of Puerto Rico, through its representatives, has agreed to provide the Division with qualified interpreters. It was strongly recommended that the Division of Workmen's Compensation fully utilize such personnel.

Workers' Incentives

The incentive of the worker is the essential ingredient in the process of rehabilitation. The worker who may become discouraged, who may be maximizing his disability to the point where he has become dependent, is not a good candidate for rehabilitation. Even apart from these considerations, real problems are presented when workers are unable to undertake a particular training program or regimen of physical rehabilitation because of lack of cash income. The recommendation was that temporary

disability payments should be continued while the claimant is undergoing medical and vocational rehabilitation services. It is also indicated that payments of temporary disability benefits should be continued to the claimant while undergoing training if the need for training could be related to the industrial accident which constitutes the major contributing factor to his disability.

Recommendations

1. Litigation need not be a barrier to rehabilitation. Litigation may be a positive aid if the attorney in whom the worker has confidence advises him as to the desirability of submitting to a rehabilitation program and is instrumental in overcoming his reticence to accept such a program.

2. Petitioners' attorneys have made a valuable contribution in the field of decisional law. The primary obligation of an attorney should be to make sure that the client receives adequate medical care and an effective rehabilitation program.

3. To encourage a positive attitude on the part of legal practitioners towards the rehabilitation process, legal fees should be computed so that they have the best possible effect on the provision of medical and rehabilitation services.

4. The formal method of settling cases will have more meaning if it is reserved for only those cases where it is indicated. A rule should be promulgated prohibiting the filing of any petition, except under unusual circumstances such as the running of the statute of limitations, unless expert medical testimony has been obtained beforehand by the attorney who is filing the claim petition.

5. The free exchange of medical information can serve to reduce the issues that are subject to litigation. All reports relating to the treatment of the injured worker, either by the treating physician or the worker's personal physician, should be exchanged among the parties at request. This recommendation should be implemented through the Workmen's Compensation Division with the active cooperation of all interested parties, particularly the medical profession.

6. There is an immediate and definite need for the Department of Labor and Industry to clarify the siutation where liability is contested in a workmen's compensation case and the employee is not receiving temporary disability benefits. At the same time, he may not be receiving payments under the Temporary Disability Insurance program on the grounds that he is entitled to workmen's compensation. In such situations where liability is contested, the worker should be eligible to

receive TDI payments with the right of reimbursement from the compensation carrier if the matter is ultimately held compensable.

7. In so far as the provision of medical care and rehabilitation services are concerned in cases where liability is contested, all parties should be apprised of the position of the Rehabilitation Commission which stands ready to make available facilities of the Commission for necessary services in appropriate cases. In these cases, if the carrier is ultimately held liable, reimbursement should be made to the Rehabilitation Commission.

8. In all cases where there is any question of liability of the employer, motions for temporary disability and medical treatment should be handled expeditiously by the Division. This issue of responsibility for cash payment and medical care in cases where liability is questioned concerns only a small minority of cases, but the issue has an importance far beyond this. If the Division has difficulties in hearing motions expeditiously, attention should be paid to adequate staffing and increased financial aid so that such services may be readily available.

9. A successful program of rehabilitation requires a consciousness of the problem among all concerned, including employees of the Rehabilitation Commission and Workmen's Compensation Division. Medical examinations of claimants should be made for the purpose not only of arriving at an estimate of disability but also for determining the rehabilitation needs of the claimant and, when appropriate, immediate referral to the rehabilitation agencies.

10. Temporary disability payments should be continued to the claimant while he is undergoing medical and vocational rehabilitation services.

11. The Puerto Rican resident who comes to work in New Jersey, either as an emigrant or a contract laborer, poses special problems in workmen's compensation. The problem of communication would be eased if the representatives of the Commonwealth of Puerto Rico would provide the Division with qualified interpreters in the various areas. All parties should lend their efforts to facilitating medical examinations of petitioners for treatment or trial purposes either within the Commonwealth or in New Jersey. Where necessary the State Insurance Fund of Puerto Rico should defray transportation expenses for an injured client, with the right of reimbursement (through amendment of the statute) upon successful completion of the trial.

Chapter III

Administration of Workmen's Compensation And Rehabilitation

Administration of the Law

WORKMEN'S compensation has been plagued with administrative problems ever since its inception in 1911. This is well illustrated in the case of the New Jersey statute. When it was first passed the statute created no administrative machinery. Rates and schedules of compensation benefits were set forth, but in the event of controversy the only appeal was to the Court of Common Pleas, now known as the County Court. The legislation did provide for an Employers Liability Commission to observe the operations of the act and to report yearly to the legislature. In its first report issued in 1912, the Commission was rather optimistic, but by the next year it was recognized that there were administrative deficiencies in the law. Workers had no idea of where to apply for information about the law and no place to turn if the settlements which were proferred were not adequate.

A devastating investigation of the New Jersey statute by the Social Insurance Committee of the American Association for Labor Legislation was influential in persuading the legislature to change the law to provide for an administrative body.[1] Makeshift remedies were devised by the Legislature in the form of a Workmen's Compensation Aid Bureau in 1916, but it was not until 1918 that a Workmen's Compensation Bureau was created in the Department of Labor with the Commissioner of Labor as chairman. This was the first real piece of administrative machinery in that it empowered employees of the Bureau to hear and decide cases, but even today the decision of the judge of the Division of Workmen's Compensation may be appealed to the courts where there is a trial *de novo* consisting of a reargument and reweighing of the evidence.

The 1916 Aid Bureau was designed to provide information to employees, or possibly to accomplish what Max Kossoris

[1] Monroe Berkowitz, *Workmen's Compensation, The New Jersey Experience*, (New Brunswick: Rutgers University Press, 1960). See p. 118.

claims to be the basic objective of administration—to see to it that the worker receives the benefits to which he is entitled.[2] But much of this was lost sight of. There was little in the original legislation, or in the many amendments which have been made throughout the years, to lend support to the idea that the Workmen's Compensation Division should have positive duties for administering the act and for seeing to it that its provisions are complied with. In common with the statutes in so many other jurisdictions, the philosophy is that the worker and the employer should come to some meeting of minds concerning the amount of compensation benefits that are due, and, failing that, tribunals are provided to adjudicate disputes. In light of the type of statutes that exist and in light of their legislative history, the wonder is that so much has been done in the way of administration, and not that so little has been accomplished.

In the period after World War I, the close collaboration between the Rehabilitation Commission and the Workmen's Compensation Bureau was accomplished not by legislative enactment but by the fact that the administrators of the two bureaus worked in close harmony. Also the same individual, the Commissioner of Labor, was responsible for both rehabilitation and workmen's compensation. Even in the post-World War II period when the Direct Settlement Review Program was instituted, this was not the result of any legislative enactment but of administrative changes within the old legislative framework. These efforts to induce a note of positive administration in the law are a tribute to the devoted people who have been assigned administrative responsibilities and who recognize the deficiencies of the statute with which they are called upon to work.

The panel on administration recognized the extreme breadth of the area and confined itself to only a few of the many problems that need constant discussion. It recognized that the real challenge was to work within the existing framework to accomplish the desired goal of bringing rehabilitation to those workers who can profit by it.

Providing Information for the Parties

Much of the present responsibility for the administration of the individual case rests with the employer or the insurance carrier. This responsibility may be effectively discharged in the case of the large insurance carrier which has assumed the burden of providing adequate medical care and rehabilitation services. However, small carriers within the state may be represented by only a few representatives who have neither the time nor the knowledge to purchase the best in medical care and services. In such situations the panel felt that much could be done in the way

[2] Max D. Kossoris, "An Appraisal" in *Workmen's Compensation in the United States* (U. S. Department of Labor, Bureau of Labor Statistics, *Bulletin No. 1149*, 1954). See p. 3.

of providing carriers with information about the services available within the state, including the services of the Rehabilitation Commission.

Comparable information must be provided labor unions and employees. Employees cannot request the rehabilitation services to which they may be entitled if they do not know what is available. Both employees and labor officials should be made familiar with what can be accomplished through rehabilitation so that effective rehabilitation programs can be undertaken when the need arises. The panel endorsed the present efforts that are being made in informing labor union officials and shop stewards. These efforts are an outgrowth of the program on rehabilitation conducted in cooperation with the Institute of Management and Labor Relations at Rutgers, the State University.[3] The more that can be done to make labor rehabilitation conscious, the less large will loom the problem of placement of disabled people. These efforts may be especially effective in cases where placement responsibilities of the Division require some modification of the existing seniority system.

Responsibilities of the Division

The panel agreed that the responsibilities of the carrier are large, and that the basic financial responsibility for the vocational rehabilitation of workers with employment-connected disabilities is properly that of the employer. It was recognized that this did not lessen the administrative responsibilities of the Workmen's Compensation Division. It is vital that the Division have available to it certain basic information if these responsibilities are to be carried out. Periodic reports filed by the parties should contain information about medical and vocational rehabilitation services which are indicated and whether or not these services are being proffered. Sufficient medical information should be provided to allow personnel of the Workmen's Compensation Division to evaluate whether appropriate rehabilitation efforts are being made by the carrier. This is especially necessary in cases where the carrier has a record of inadequate supervision of cases. The Division should be responsible for assessing the performance of carriers in this respect.

The panel endorses all methods which have been used to bring about a closer relationship between the Workmen's Compensation Division and Rehabilitation Commission. The Rehabilitation Section in the Workmen's Compensation Division was started in 1956. The coordinator who supervises this section receives certain "first report of accident" forms after selection is

[3] "A Project to Demonstrate the Effectiveness of a Cooperative Rehabilitation Program Between a State University, A Public Vocational Rehabilitation Agency, and Organized Labor" held in cooperation with the New Jersey Rehabilitation Commission, Institute of Management and Labor Relations, and Rutgers, The State University.

made from a gross screening of those who could possibly benefit from rehabilitation. The coordinator has experienced difficulties in the selection of these cases for referral to the Rehabilitation Commission and to other interested agencies. In part, this is due to the lack of information on the first report, or even in the case file; and in part is due to the inability of the Division to supervise actively the provision of medical care and rehabilitation.

Consideration should be given to strengthening the administrative powers of the Division to enable them to administer the provisions of the law which deals with medical care. The work of the Rehabilitation Section has been financed largely from grants provided by the Vocational Rehabilitation Administration until fiscal 1964. In that year the Rehabilitation Section became an established section operating with a section director and three rehabilitation counselors. The time has now come to establish a fully staffed rehabilitation section in the Workmen's Compensation Division financed by state funds. Such a section should include competent medical personnel to supervise the medical aspects of the work. An adequately staffed section with power to review cases could bring about as dramatic results in the area of rehabilitation as the Director Settlement Review Program has brought about in that area. Certainly, improvements are necessary in the screening mechanics of the Workmen's Compensation cases for rehabilitation.

Real progress in administration cannot be made in the absence of essential information. All efforts should be made toward compiling statistics on the types of cases which benefit by rehabilitation, the times when they should be referred, and the long-term results of their referral. Selection of cases for rehabilitation can best be done on the basis of experience, not statistics. Only on the basis of more adequate information can progress be made.

A New Spirit of Cooperation

With adequate staffing and information must come a renewed determination to bring rehabilitation to all who can benefit by it. Workers must be made aware that workmen's compensation involves something more than cash benefits. Lawyers must be made aware of the potential of rehabilitation and the fact that this will benefit and not harm their clients. Specifically insurance carriers must be made aware that one way to reduce medical costs is to provide the best possible medical care promptly, and generally, they must recognize all the opportunities that are possible in the area of rehabilitation.

Above all, the physician must become aware of the potentialities of rehabilitation procedures beyond the acute medical phase and of the necessity of prompt reporting and referral. The success of rehabilitation in a jurisdiction such as Ontario, Canada, can be ascribed not only to legislation, but also to the excellent

liaison that exists between the workmen's compensation authorities and Canada's medical profession. There, rehabilitation as an avowed goal is accepted as a matter of course, and physicians cooperate with the Workmen's Compensation Board to bring about this desired goal.

This type of cooperation can work in New Jersey if all bend their efforts to the common good and recognize the potential involved in the prompt and adequate provision of rehabilitation services to the injured worker.

Recommendations

1. The Rehabilitation Section within the Division of Workmen's Compensation should be expanded and strengthened.

2. The Rehabilitation Section within the Division of Workmen's Compensation should have available to it a full-time medical staff to assist in making evaluations and referrals.

3. The Rehabilitation Section within the Division of Workmen's Compensation should be financed by state funds.

4. Responsibility for vocational rehabilitation to workers with employment connected injuries is largely that of the employer. Public funds of the Rehabilitation Agency should be looked upon as supplementary in the provision of these services, particularly when the worker is additionally handicapped by non-industrial or pre-existing disabilities. The likelihood of this financial responsibility being fully accepted by employers will depend on their overall confidence in the administration of the law in all of its aspects.

5. It is the proper function of the Division of Workmen's Compensation to see to it that workers receive all the benefits to which they are entitled under the law, including medical care and rehabilitation services. These are the responsibility of the employer and his insurance carrier. In addition, in certain cases rehabilitation services may be secured through the cooperation of the Rehabilitation Commission and with the aid of rehabilitation facilities throughout the state, including those financed by community support.

6. Reporting forms presently required by the Division should include information about the medical and rehabilitation services indicated and whether they are now being provided. Sufficient information should be provided on these forms for adequate screening by the Rehabilitation Section.

7. It is necessary for the Division of Workmen's Compensation to assume responsibility for disseminating information about the rehabilitation of workers. Educational efforts directed toward various interest groups can best be carried out in cooperation with the several professional organizations within the state.

8. Labor unions should be made aware of the potential involved in the rehabilitation of workers. The panel endorsed the educational efforts that have been made in cooperation with the Institute of Management and Labor Relations at Rutgers, the State University. Further efforts should be made to approach union stewards and higher union officials and to provide the kind of popular, informational booklets, such as have been reproduced already.

10. Educational programs should be further developed to bring to union members and their officers the need for solutions to the problem of rigid seniority provisions which interfere with the employment of "qualified" handicapped workers.

11. The cooperation of the local medical societies should be enlisted in informing the physician about the potential of physical and vocational rehabilitation and the vital necessity for prompt reporting and referral of disabled patients.

12. It should be the responsibility of the Division of Workmen's Compensation to compile adequate statistical information for better evaluation of potential in the referral of injured workmen.

Chapter IV

Supervision of Medical and Rehabilitation Service

The Problem and its Setting

TEN YEARS ago the International Association of Industrial Accident Boards and Committees declared: "Rehabilitation is the end result of the compensation process. If we compensation administrators fail to realize this important fundamental and are satisfied merely to sit back and dole out to the injured workman a certain percentage of his wage according to our various laws, then the entire compensation process becomes archaic and outmoded."

Every group concerned with workmen's compensation has expressed a similar view. Without exception, organized medicine, labor, management, insurance, compensation administrators, and attorneys—all have endorsed rehabilitation as the primary objective of workmen's compensation. And yet, it is generally conceded that in a great many instances even the first step towards achieving the goal of rehabilitation under workmen's compensation; namely, the provision of high quality restorative medical services, has not been taken.

A number of reasons are given for this; inadequate fees, the reluctance of employers and carriers in many instances to pay for quality services, and the feeling on the part of the claimant's lawyer that the disability should loom as large as possible in order to obtain greater indemnity. These are only a few factors which to some degree prevent many claimants from receiving the quality, kinds, and amounts of services required.

In the United States any licensed physician can legally perform any medical procedure regardless of the need for specialized training or experience to perform the procedure. There are, however, other safeguards which tend to elevate the quality of medical care—facilities, professional societies, and financial inter-

mediaries which serve as mechanisms for the payment of services—all impose additional standards.

In general, however, the accountability for medical care resides with the attending physician. In those instances where it is assumed jointly by some other agency, that agency may not necessarily be primarily concerned with the claimant's welfare.

In those cases, for example, in which an insurance company assumes responsibility for the medical care provided a claimant, the incentive for quality stems from the very practical base that "good medicine pays." However, an insurance company is a business organization, not a philanthropic institution. Its primary responsibility is to its policyholders and, in the case of stock companies, also to its shareholders. It is limited both by statute and policy language. It can be recognized also that an insurance company frequently finds itself in a position of defending the interests of its policyholders against the claims of the injured workman in a disputed or contended case.

Despite the foregoing, it is probably not an exaggeration to say that the insurance industry has contributed as much as any group to the elevation of the quality of medical care under workmen's compensation. However, insurance companies should not be expected to assume the role of arbiters of medical care and rehabilitation services under workmen's compensation. It is a function which they are not designed to perform.

Yet it must be recognized that standards of quality cannot be achieved and maintained unless standards exist, and that some single agency must be responsible for supervising those persons and agencies providing services to encourage them to meet the standards which should be established.

It is becoming increasingly accepted that these are functions which the workmen's compensation agencies should exercise, since they are the statutory bodies which have been assigned responsibility for administering the compensation programs.

There is far less agreement about the extent of the workmen's compensation agency's authority for the supervision of services and the way in which this authority should be exercised.

Responsibilities of the Division

In February 1960, the Regents of the American College of Surgeons adopted a policy statement entitled *The Basic Requisites for an Adequate Compensation System* developed by its Subcommittee on Industrial Relations. According to this statement, it was the duty of the compensation agency to supervise the medical care of the workmen's compensation cases. In order to do this it was necessary that each administrative agency of workmen's compensation have a medical staff to:

1. Review all reports of injury as submitted by the employer and attending physician.

2. Determine those types of cases which are to be called to his immediate attention; and in such cases to take steps:
   (a) To determine accuracy of diagnosis.
   (b) To assure that the injured worker is under competent medical care.
   (c) After discussion with the attending physician, to consider whether there is need for consultation services.
3. See that competent and continuous medical care is provided as long as medically indicated.
4. Establish standards for the provision of medical and vocational rehabilitation and to see that such services are provided when and as long as indicated.
5. Examine all injured workers before any final financial determination of permanent disability is made by the agency, to make sure maximum recovery has been obtained.

It goes without saying that such an administrative supervision of medical care presupposes an adequate medical staff which has available to it the information necessary to make the decisions indicated. A few years ago New Jersey's law was amended to provide that no determination of permanent disability need be made until 26 weeks had elapsed. This sort of mechanical rule is designed to carry out the objectives listed above; to see to it that the worker has attained maximum recovery before the financial determination of permanent disability is made. It was recognized at the time that this amendment became law that providing for a delay of an arbitrary number of weeks was not the ideal solution to the problem. It was a mechanical attempt to prevent premature evaluation of the disability. It would be far better to have this timing determined on a case by case basis in accordance with sound medical recommendation, but, again, this would require the type of administrative concern with the medical benefits that is not present under the current structure.

Staffing Problems

At the present time, the Division of Workmen's Compensation employs part-time ten physicians and has available to it consultants of the following type: six orthopedists, one dermatologist, one neuro surgeon, one audiologist, and one ophthalmologist.

It is not meant as a criticism of the existing administrative structure to point out that deficiencies may be present. The Regents of the American College of Surgeons stated in the document mentioned above that if the Workmen's Compensation

Agency is to carry out its responsibilities for supervising medical care, it must have a medical department headed by a director well-versed in occupational accidents and diseases. It said:

> Such an individual must possess excellent medical and surgical judgment and be cognizant of the value of rehabilitation procedures. He must not only be well paid for his competence, but must have equally competent medical assistance together with a well-rounded staff.

At the present time supervision of medical care in New Jersey comes about almost as a by-product of other activities. In the Direct Settlements Review program it is necessary from time-to-time to inquire into the type of medical care being provided. Also, in referring a case for rehabilitation the adequacy of definitive medical care may come in for consideration. But what is a by-product in these procedures ought really to be at the heart of the concern of the Workmen's Compensation Division. For these purposes an adequately staffed and competent medical department is essential.

Medical Reporting

The worker does not have free choice of physician in New Jersey. In the usual case he is treated by a physician chosen by the employer or carrier. The supervision of his medical treatment is in the hands of the carrier, if anyone. The Division does not receive medical reports from the physician as a routine matter. The panel contrasted this procedure with that in the State of New York and other jurisdictions where physicians routinely report their activities in connection with the compensation case.

Experience in New York State and in disability determinations under social security has shown that with training, direction, and education, it is possible to achieve a high degree of cooperation between the medical profession and public agencies. This results not only in adequate medical reporting from the physician but also in his becoming aware of rehabilitation factors and long-range medical care. A functioning medical section with Workmen's Compensation could carry on much of the educational work with the county and state medical societies so that physicians may become aware of the services available to the disabled worker within the state.

The panel recognized that the first step in any rehabilitation program is the provision of definitive medical care and that it is not possible to separate medical care and other rehabilitation procedures. Too often persons think of rehabilitation merely as training or retraining. New Jersey has the tradition, which ought to be encouraged, of physical restoration. Retraining is used only when all else has failed, and the worker cannot be returned to his original job or his original employer.

Role of the Carrier

It is the responsibility of the Division to supervise medical care directly, but in many cases it is recognized that this must be done through the insurance carrier which has charge of selecting the physician and is the intermediary which pays his bills. Adequate medical audits of services provided would enable the Division to distinguish those carriers which are fulfilling their responsibilities in this regard and those which are not. The Division of Workmen's Compensation and its medical section should have close contact with the local claims' managers counselor in order to provide a mutual understanding of the problems of medical care and rehabilitation. It must always be borne in mind that the insurance companies cannot be expected to assume the role of arbiters of medical care and rehabilitation services under workmen's compensation. This, in essence, is the responsibility of the Division of Workmen's Compensation, and everything possible should be done to see to it that the carrier which is discharging its responsibilities and providing a high level of medical care does not suffer the unfair competition of the carrier who fails to discharge its responsibility in this area.

Recommendations

1. The New Jersey Workmen's Compensation Division should have a full-time medical staff charged with the medical supervision and direction of medical matters. Personnel on this staff must have sufficiently high levels of competence to command the attention and the respect of their colleagues who are providing care to injured or ill workmen. The salaries of full-time medical school faculties are suggested as a guide for remuneration.

2. The Workmen's Compensation Division should have available to it an advisory group consisting of representatives of the major professions involved in medical care and rehabilitation. The advisory group should help in the formulation of professional policy standards and procedures. Such an advisory group may also aid in the staffing of panels of experts which would provide the agency with competent and professional advice concerning the evaluation and care of individual patients referred to them by the agency.

3. At an appropriate time after the accident or onset of illness, the treating physician should be required to submit a full medical report to the Division of Workmen's Compensation. Sufficient medical information ought to be provided so that the medical staff of the Division can evaluate whether or not adequate medical care is being provided and whether all is

being done that should be done to provide for physical restoration and rehabilitation.

4. It is recognized that requiring such information from the treating physicians would be most successful if it is preceded by an educational campaign designed to show the medical profession the advantages of having this information available. Physicians will welcome such procedures provided they are convinced that this will result in a higher standard of medical care.

   Progress reports indicating current status of the case should be required at stated intervals. The reports of the physician should be supplementary to the reports now required from the insurance carrier.

5. The Division of Workmen's Compensation should have the legal right to obtain a thorough clinical review of cases where indicated.

6. The Division of Workmen's Compensation should cooperate with the insurance carrier and the physician in the interests of achieving maximum rehabilitation for the patient. However, in those few cases where it is necessary the Division should have authority to transfer patients to another physician or facility if the individual does not seem to be making satisfactory progress.

7. Periodic medical audits should be conducted in selected cases to obtain information as to the adequacy of care provided by the program in general. Statistics should be compiled which will include data on the medical aspects of the program. These should be analyzed to reveal trends and to judge the adequacy of the program and, in particular, the effectiveness with which the insurance carriers and employers are discharging their obligations to provide medical care.

Chapter V

Rehabilitation Facilities

And Personnel

Definition

AT DIFFERENT TIMES the term "rehabilitate" has meant various things to various people; sometimes a need, sometimes a procedure, sometimes a process, and sometimes a result.

Medically, rehabilitation has gradually come to mean the restoration of the physical capacity of the disabled person either to his original level or as close to it as possible. Psychological rehabilitation has meant the restoration of an individual's state of mind in order to cope adequately with life's problems. Vocational rehabilitation has evolved from a concept of enabling the individual to perform some traditional task—such as basket weaving —to the present concept of restoring him so that he may become a productive, wage-earning, taxpaying member of the working population. To the social worker rehabilitation means essentially the restoration of the individual's self respect and independent status in the community. To the penologist rehabilitation means the transformation of a criminal into a lawabiding citizen.

Webster defines rehabilitation as the restoration to a former capacity. The National Council on Rehabilitation has defined it as, "The restoration of the handicapped to the fullest physical, mental, social, vocational, and economic usefulness of which they are capable." This definition is broad enough to include what is sometimes referred to as the concept of total rehabilitation. We have other definitions which emphasize the process of decreasing dependence of the handicapped or disabled persons by developing to the greatest extent possible those abilities needed for adequate functioning in their economic and social environment.

Available Services

Our society has recognized that the magnitude of the problems of disability is of such importance that their solutions re-

quire national planning, national organization of personnel and facilities, and national legislation.

Although there are a number of federal agencies concerned with rehabilitation, including the Veterans' Administration, the U.S. Social Security Administration and the Public Health Service, and various bureaus of the Department of Labor, the major responsibility resides in the state-federal program of vocational rehabilitation. This program is administered federally by the Vocational Rehabilitation Administration and on the state level by the New Jersey Rehabilitation Commission, located in the state Department of Labor and Industry.

Briefly stated, the services provided under the state-federal program to physically and mentally disabled people are: (1) medical diagnosis (helps evaluate work capacity); (2) counseling, guidance, and testing (helps the person aim for the right job); (3) medical care (if needed); (4) artificial limbs or other prosthetic appliances (if needed to increase ability to work); (5) training for job; (6) maintenance and transportation costs during rehabilitation; (7) tools and equipment (if needed); (8) job placement; and (9) job follow-up to make sure both the handicapped person and his employer are satisfied.

Many people and resources of rehabilitation serve the disabled, such as the doctor, the psychologist, the rehabilitation counselor, the social worker, rehabilitation centers and facilities, education institutions, trade schools, sheltered workshops, hospitals, and employment services. These are of great importance due to the fact that many services provided under the state-federal program are purchased from these sources since the state agency of vocational rehabilitation does not maintain facilities of its own.

New Jersey's Rehabilitation Commission

In New Jersey the Rehabilitation Commission has 60 rehabilitation counselors to serve the rehabilitation needs of the disabled in our six million plus population. This represents, approximately, a ratio of one counselor to every 100,000 plus population. Included in the staff of the 60 professional counselors are four counselors who serve specifically persons who have been industrially disabled.

The requirements for a rehabilitation counselor are a degree in psychology, sociology, or education, plus one year of related experience. Or he may have an M.A. degree in vocational rehabilitation counseling, personnel and guidance, education, psychology or sociology, and no related experience. The salary range for the rehabilitation counselor is $5,499 to $7,149 per year. The top of the range is reached in six yearly increments of $275.

The 1964 budget of the Rehabilitation Commission is $2,841,972, but, if all federal matching funds were utilized by the state, the Commission's budget could be $4,293,780. The major

portion of this budget is used for the needed purchase of services for the disabled clients. In 1963, 12,764 New Jersey citizens received rehabilitation services and 2,242 were rehabilitated. Over 7,000 were receiving services which hopefully will make it possible for them to become productive citizens. It is estimated from National Health statistics that 9,000 people each year come to need and could benefit from vocational rehabilitation services in New Jersey.

The state-federal program is limited by statute to providing services to those for whom a vocational objective is feasible.

Limitations of the Commission's Program

It has been stated that limitations of funds and staff encourage the Rehabilitation Commission to accept as clients those persons whom they feel are the best risks for ultimate employment and those persons whom they can serve with the least cost. It is said that the Rehabilitation Commission places an undue emphasis on, quantitative results rather than qualitative results.

Further, it is felt that the specialized services of rehabilitation facilities, such as centers and other sources, are poorly planned, both in terms of services provided and location.

Many of these shortcomings, *to the extent that they are valid,* could be improved by more adequate state and federal appropriations. A better understanding and appreciation of the value of rehabilitation services by those providing medical care would assist in bringing persons requiring rehabilitation to the early attention of agencies providing services. It should be recognized, however, that the failure to provide health and welfare services, including rehabilitation services, to those in our society who require them is an indictment of our total society.

New Jersey's Rehabilitation Facilities

New Jersey is fortunate in having within its borders one internationally known rehabilitation facility, the Kessler Institute for Rehabilitation. There are other fine comprehensive rehabilitation facilities available to the injured workman, but there has not been a complete inventory of the services available in New Jersey. A directory should be produced which would serve to identify and locate these services, indicating the special interest. of each and the extent to which these services can be made available to the injured workman.

Early Referral for Rehabilitation Services

Time is often of the essence in a rehabilitation case, and it is recognized that in the case of an injured workman there are sometimes many interested parties to be consulted; the Work-

men's Compensation Division, the treating physician, the insurance carrier, the medical staff of the rehabilitation facility, and so forth. Ways and means must be explored to strengthen communications among all of these so that there may be quicker resolution of any conflicts relative to the provision of rehabilitation services.

The Rehabilitation Section of the Workmen's Compensation Division continues to demonstrate the value of its work.

Staffing Problems

Little can be done in the way of providing adequate rehabilitation services unless rehabilitation facilities, the Rehabilitation Section of Workmen's Compensation Division, and the Rehabilitation Commission, itself, is adequately staffed. This will not come about until such time as the salaries paid to professional rehabilitation personnel within the state are made competitive with salaries offered in neighboring states in order to attract and retain qualified personnel.

Public Information

The panel recognized that it would be senseless to build and provide additional rehabilitation facilities unless the physicians and insurance carriers, organized labor, and other interest groups are made fully aware of rehabilitation potential through these facilities. Further, Workmen's Compensation and the Rehabilitation Commission need to develop educational materials and programs which will be of help in informing the physicians, insurance claims representatives, community services representatives of organized labor, and others vitally concerned as to the rehabilitation facilities available and the possibilities for the disabled person inherent in their use. Special attention should be given to bringing this information to the medical profession, so directly concerned with the ultimate rehabilitation of the patient.

Recommendations

1. The Rehabilitation Section of the Workmen's Compensation Division should be expanded with respect to staffing and budget. Adequate information should be made readily available through the Division to insure early referrals of cases which could benefit from rehabilitation services.

2. A directory should be produced to identify and locate rehabilitation services now available in N.J. for all areas of disability.

3. A statewide review of present rehabilitation facilities and services should be a first step in planning for additional rehabilitation facilities. Cognizance should be taken of sponsorship, support, and community interest; both as to staffing and financial support.
4. Existing facilities should review their present program emphasis to determine whether it is meeting adequately the needs of moderately as well as severely disabled workers.
5. The Division of Workmen's Compensation and the Rehabilitation Commission should cooperate with other interested agencies in providing educational information to all professions concerned—public and private agencies, representatives of industry, and organized labor. Specific information should be provided concerning available rehabilitation facilities and the advantages in their use.
6. There is a basic need for increasing the financial support of the State Rehabilitation Agencies. New Jersey does not appropriate sufficient state funds at present to secure all the federal funds available for vocational rehabilitation of disabled people. The economics of rehabilitation are such that it does not cost, but rather it pays. A more objective approach to financing is needed on the part of New Jersey to take advantage of the federal funds available to it. Disabled people in the state could benefit materially through increased rehabilitation facilities and services.
7. Speed is of the essence in handling the vocational rehabilitation of workers. To this extent all efforts should be made to improve communications between the attending physician, the physician of the rehabilitation facility, and representatives of the Rehabilitation Commission and the Workmen's Compensation Division. Maximum flexibility should be the goal so that services can be provided where and when indicated. If the Workmen's Compensation Division had an adequate medical staff, periodic medical audits of what has been done could serve as an effective supervisory measure. Good communications facilitate the provision of services where and when needed.
8. It is useless to expand rehabilitation facilities unless they are sufficiently staffed. Salaries for persons working in the rehabilitation discipline in New Jersey are not adequate to attract and hold qualified personnel in all areas, both public and private. This applies particularly to the New Jersey Rehabilitation Commission. Professional opportunities in this area are not covered by such benefits as salaries and advanced educational opportunities to encourage essential personnel to put down their roots in New Jersey. New Jersey must at least be competitive with neighboring areas.

Chapter VI

Employment Problems

Of the Handicapped

Unemployment and the Handicapped

IN MODERN society income is dependent largely upon work, and the individual is expected to be a productive member who contributes to the flow of goods and services. For the past several years the country has been confronted with an unemployment rate which has hovered around the 5% figure. In part this may be due to the lack of adequate economic growth, and in part it may be due to the vast structural changes that are taking place. Automation has been accepted as a term which covers many of the newer technological and other changes revolutionizing industry.

Attacks on the problem of unemployment have included programs designed to meet the problems of the so-called unemployables. These may be persons who are functionally illiterate or who do not have the basic social skills necessary to survive in a world of work. This problem may increase as skills change with changing industrial requirements. The Federal Government is concerned about a healthy economy being maintained and has started training programs under the Area Redevelopment Act, the Manpower Development and Training Act, and the Economic Opportunities Act.

The first concern of the Institute's panel was with workers who are handicapped by reason of industrial injury and who have undergone a program of rehabilitation but find the doors to employment blocked to them. They are only once removed from the worker whose handicap may be due to inadequate education or to the emotional shock that comes from being without a job for several years. It would be ironic, however, if the social legislation which was designed to aid the injured worker were used as an excuse for denying him employment: an excuse based on the unfounded fear of increased workmen's compensation costs used as a reason for not hiring handicapped workers.

National Attitudes

Hire the handicapped has long been a popular slogan. It has also received the endorsement of associations of employers, as well as trade unions, the medical profession, and others. The official policy of the National Association of Manufacturers states: "The American system of private competitive enterprise should provide every opportunity for the handicapped person who is willing and qualified to perform the job. Employers know from experience that the handicapped individual, when matched to the requirements of the job, is no longer handicapped."

The Chamber of Commerce of the United States has this to say: "The experience of employers with these (physically impaired) workers has demonstrated that their job-performance records compare favorably with those of the able-bodied, with respect to productive efficiency, accident rates, and absenteeism."

The AFL-CIO points out: "Handicapped workers when placed on the right job are capable workers. Studies have proved that they are productive and efficient." [1]

The excellent work being done nationally by the President's Committee on the Employment of the Handicapped is being supplemented in New Jersey by the Governor's Committee on the Employment of the Handicapped. Employers, labor union representatives, as well as government personnel, have been active in spreading information about solving problems concerning the hiring of handicapped people.

The fact that when the handicapped are properly placed they make good workers has been the subject of numerous studies. [2]

W. Scott Allen summarized the leading studies of the employment of the handicapped, beginning with the Western Electric study in 1932 and citing the recent experience of the Liberty Mutual Rehabilitation Centers. He observes that from the evidence of these studies it is obvious that the presumed difficulties in the employment problems of the handicapped are more apparent than real. Yet major resistance is still encountered by rehabilitation service personnel, vocational counselors, and employment specialists in placing handicapped workers. This, in spite of all that has been done to spread the word through the President's Committee and the Governor's Committees; in spite of the concrete example of firms which have successfully employed the handicapped; and in spite of evidence in various studies. Allen concludes that among the nearly 160,000,000 manufacturing and non-man-

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[1] The benefits of employers on the subject of hiring the handicapped as well as the necessity of various skills today can be seen in an excellent poster folder entitled *Workers Wanted*, Post Hire, which is the publication of the American Mutual Insurance Alliance and distributed in cooperation with the President's Committee on Employment of the Handicapped.

[2] Many of these are summarized in an article by W. Scott Allen, asst. vice president of the Liberty Mutual Insurance Company, entitled "Successful Placement of Handicapped Workers" in the archives of Environmental Health, Dec., 1960, Vol. 7, p. 611-624.

ufacturing industries and businesses in the United States, only a handful of firms have successfully coped with the problem of hiring handicapped workers.

The panel which considered the employment problems of the handicapped had representatives from the Governor's Committee, from sheltered workshops, from the Rehabilitation Commission, from management, from unions, and from the legal and medical professions, as well as from the employment service. All of the problems presented in the literature concerning the attitudes of employers were brought out during the discussion by this panel. In part the problems of employing the handicapped relate to the prejudice which employers may have because of the "cripple" appearance of many of the handicapped. They may feel that this will result in a psychological reaction by other employees. It was also pointed out that new advances in rehabilitation may pose further obstacles in this regard, especially for the rehabilitated cardiac patient who can function well with new developments, such as heart valves and pacemakers with their complicated but effective electrical wiring devices. All of these may add to his unusual appearance and serve to identify him as a handicapped person at the interview stage, where he may be arbitrarily rejected despite the fact that his condition with these new devices may be better than normal.

The panel felt that the situation must be faced for what it is. To the extent that misinformation still prevails and that prejudices still exist as to the capabilities and problems involved in hiring the handicapped, intensive educational efforts must be continued. Surveys and studies reveal that handicapped workers are safe, productive, dependable, and loyal employees, and this viewpoint needs constant reiteration. At the same time, it is recognized that the problems of employing the handicapped are part of the larger problem for achieving full employment for all. Psychologically, the primary purpose is to place the handicapped worker in a position where he will have equal opportunity with non-handicapped workers for whatever jobs are available. This is related to the attitudes of employers and of society generally.

Purposes of the Second Injury Fund

Discussion of the problems of hiring the handicapped, especially the industrially disabled, leads inevitably to the second or subsequent injury fund law, or, as it is known in New Jersey, the 1% Fund. One of the original purposes of these laws in the various states was to encourage the hiring of the handicapped worker. If a worker with a pre-existing impairment suffers a compensable injury, the combination of the prior condition and the second injury may result in disability greater than that which resulted from the subsequent injury alone. The classical example is the one-armed worker who loses the other arm in an industrial acci-

dent. The second injury alone, under most jurisdictions, would require a permanent partial award of a number of weeks. The loss of the two major members, however, would render the worker permanently and totally disabled. Under the 1% Fund in the State of New Jersey the employer would pay only the schedule award for the loss of the arm, and the balance of liability would be shifted to the 1% Fund. Presumably, therefore, the law is designed to encourage employers to hire handicapped workers.

Before one becomes too optimistic, however, it should be remembered that the subsequent injury fund in New Jersey is fairly limited. Also, the evidence indicates that a high percentage of employers in the state are unfamiliar with the law and its purposes. In a survey conducted by a sub-committee of the International Association of Industrial Accident Boards & Commissions (report of the Sub-Committee on Subsequent Injury Funds, delivered at the 46th Annual Convention of IAIABC, Edmonton, Alberta, Canada, August 21-25, 1960 [3]) it was found that most employers in Iowa and New Jersey were unaware of their state's subsequent injury fund laws. Seventy per cent of the respondents in New Jersey were unfamiliar with the law.

The New Jersey Governor's Committee to Employ the Handicapped has distributed a summary of the New Jersey Second Injury Fund. It points out that employers want to hire the handicapped, but they do not want to be penalized for doing so. It adds that the employer's awareness of the skills, dependability, loyalty, and safety records of the handicapped may be overshadowed by the knowledge that if the handicapped worker is involved in a job accident the effects may be more severe than if a non-handicapped worker had the same accident. The second injury fund, the release continues, provides benefits for a worker who is totally and permanently disabled as a result of an industrial injury, even if such a person had previously been permanently and partially disabled from some other cause, irrespective of whether the previous injury or condition was industrial or non-industrial in origin. The Governor's Committee, probably quite wisely, doesn't attempt to get into the details of the fund but points out that the law governing the fund is complex and suggests that advice of counselor be secured on any matter that may involve it.

Limitations of the Fund

Several things should be noted about the 1% Fund law:

1. The law does not restrict coverage, insofar as the original injury is concerned, to the industrially disabled. It includes within its provisions the handicapped worker, regardless of the origin of his impairment, be it congenital, industrial, or otherwise.

[3] A summary of this study can be found in A. Jaffe, editor, *Seventh Conference on Workmen's Compensation and Vocational Rehabilitation.*

2. New Jersey's law is restrictive in the sense that the second injury fund comes into operation only if the combined results of the second industrial accident and the original impairment result in permanent and total disability.

3. Most important, and probably the least understood by rehabilitation people and others, is that no person is eligible to receive payments from the second injury fund if:

   (a.) The disability resulting from the injury caused by the compensable accident is in itself permanently and totally disabling. There can really be little quarrel with this since, in effect, what this says is that if the second accident, in and of itself, resulted in physical impairment which is total and permanent, regardless of the original handicap, then the fund should not be liable.

   (b.) If permanent total disability results from aggravation, activation, or acceleration by the last compensable injury of the pre-existing disease or condition, then the person is not eligible to receive payments from the second injury fund. This is based on the feeling that the employer takes the man as he finds him and that if the second or last compensable injury aggravates, activates, or accelerates the previous condition, then the full responsibility rests on the employer and not on the fund. Only if the subsequent injury is unrelated to the first can the employer be relieved of a portion of his liability. Thus the employers who look to the subsequent injury fund law to relieve them of liability in cases where a person with a cardiac condition becomes further disabled may be unrealistic. If the total disability is a result of an aggravation or activation of the previous condition, then the full liability is the present employer's under the 1% fund law.

   (c.) The person is not eligible to receive payments from the subsequent injury fund law if the disease or condition which existed prior to the compensable accident is in itself progressive, and by reason of this progression, renders him totally disabled. In effect, this is saying that if the pre-existing condition, even though it may not be aggravated or accelerated, may be itself progressive and it alone may lead to total permanent disability. In that case the last compensable injury becomes irrelevant; the fund should not be called into play.

   (d.) Lastly, a person who is rendered permanently partially-disabled by the last injury, if he subsequently be-

comes permanently totally-disabled by reason of physical deterioration or pre-existing condition or disease, the fund does not come into play.

In effect, provisions contained in A, B, and D are designed to prevent payments from the fund if the permanent and total disability flows from either of the disabilities but not from their combined effects.

Financing the Fund

New Jersey's fund is financed by an assessment against the carrier and self-insurer. Each is assessed 1% of the compensation payments, excluding the cost of medical benefits, made during the calendar year preceding the date of collection. It is from this assessment that the New Jersey fund derives its name.

This method of assessment, which bears little relationship to the amounts that may be necessary to carry out the financial obligations of the fund, is also used in seven other states. In New York, in contrast, total disbursements from the fund are calculated, and each insurance carrier is assessed a proportion of these disbursements equal to the proportion which the total compensation payment of the carrier bears to the total compensation payments made by all carriers during the year. Two states, California and Pennsylvania, finance their funds entirely by legislative appropriation. Under their system the costs are borne by the general taxpayer rather than the employers or the insurance carriers.

The original law did not provide any maximum limit on the size of the fund, but today the maximum limit is $1.5-million and collections cease whenever the amount of the fund, including accumulate interest, exceeds this sum. In recent years, only in 1956 have no collections been made because the fund balance was over the statutory amount.

Fund Hearing Procedure

1. Before any claimant can receive benefits from the fund, a hearing must be held and a determination made. In the conventional 1% Fund case the employer is not involved in the hearing. The fund is represented by the Attorney General's Office, which acts for the Commissioner of Labor and Industry. The injured worker is also represented by counsel. A verified petition for benefits must be filed within two years after the last compensation payment has been made or the date of the last medical treatment, whichever is the latter. The hearing is held before a Judge of Compensation who files an advisory report with the Commissioner.

2. Under a recent rule promulgated by the Division of Workmen's Compensation, certain 1% Fund cases may be tried

concurrently with a claim for workmen's compensation. At the conclusion of the hearing, the Judge of Compensation makes a determination as to the compensation claim petition and renders an advisory report as to the petitioner's eligibility for 1% Fund benefits. This rule assures the injured worker the prompt and full statutory benefits to which he may be entitled.

The supervisor of the 1% Fund also personally interviews each of the petitioners to determine his employment status, physical condition, and sources of income.

The order approving or denying benefits can only come from the Commissioner of Labor and Industry. If the Commissioner approves the application, he directs the Treasurer of the State of New Jersey to make semi-monthly payments to the petitioner, subject to periodic reconsiderations and extensions as the case may require. Payments are made from the 1% Fund account which consists of moneys collected from workmen's compensation insurance carriers and employers self-insured for employers liability.

Improving the Fund

Proposals to improve the New Jersey law have been borrowed liberally from the experience in New York State. There, once it is established that the employer had knowledge of the pre-existing condition and that it was a hindrance to employment; and once it is shown that the combined injuries result in disabilities materially and substantially greater than would have occurred in the absence of the pre-existing condition, the fund becomes involved. The whole award runs initially against the individual employer, and payment for compensation begins and continues without interruption. However, if the liability extends beyond a 104-week period, the employer can petition the fund to assume some of the liability. This, in a sense, brings the real contenders together. The fund can be defended by representatives of the insurance or employer interests or the very persons who contribute to the fund.

It also might be noted that at present there is some dissatisfaction with the provision of the New Jersey 1% Fund which limits an award to weekly compensation payments. Today, medical and hospitalization payments are increasing at such a rate that they may constitute the financially significant portion of the liability. There is nothing in the law at the present time which would remove this liability from the employer.

Those interested in employing the handicapped should have a direct interest in the subsequent injury fund. It should be the type of law which will do everything possible to encourage the employment of the handicapped. The panel recognized the deficiencies in the New Jersey law and also that a coordinated effort on the part

of all interested groups will be necessary before significant legislative changes are made.

Recommendations

1. There is a general lack of knowledge concerning the potential of the handicapped worker and the advantages which modern rehabilitation practices have brought about. There should be an intensive educational campaign directed toward government agencies, employees, employers, unions, and individual citizens. This campaign should be designed to make the employer aware of the advantages of employing the handicapped and of the valuable skills available. It should be designed to demonstrate the economic essentiality of equal employment opportunity for all in order to maximize the state's productive potential. It should be designed to point out to the labor unions the advantages of adopting a flexible attitude in collective bargaining provisions which would maximize employment. And finally, it should be designed to enlist the cooperation of the general public in the referral of physically impaired workers to the rehabilitation agencies.

2. It is vitally necessary that the State Vocational Rehabilitation Commission be adequately staffed with personnel whose compensation is comparable to the employment opportunities available in neighboring areas. To this end all suitable efforts should be made towards influencing the legislature of New Jersey to appropriate sufficient funds to take advantage of federal matching funds available for services provided by the State Rehabilitation Commission.

3. Subsequent injury fund laws have a limited but indispensable role to play in encouraging the employment of the handicapped. It is essential that a continuing campaign be conducted to familiarize employers with the provisions of the subsequent injury fund law, what it is designed to accomplish, and what it cannot accomplish.

4. New Jersey's subsequent injury fund law is unduly restrictive. It should be amended to cover not only those who are totally and permanently disabled as a result of the combined injuries but also to cover anyone whose disability from the combined injury is materially and substantially greater than it would be from the second injury alone.

   Some form of sharing the liability, such as adopted by New York, has the advantage of beginning payments promptly and also of bringing together the real parties at interest—

the employee on one hand and the representatives of those who contribute to the fund on the other.

Amendment of the present second injury fund law is needed in order to increase the opportunities for employment to the handicapped. This is less controversial than many other amendments to the Workmen's Compensation Bill and might well be considered in separate legislation.

5. Employers should be encouraged to utilize the services of the Employment Service in placing the handicapped. Selective placement is crucial in securing maximum performance. All publicity possible should be given to the Physical Capacities Job Appraisal and other services of the New Jersey Employment Service.

6. The Governor's Committee for the Employment of the Handicapped should be encouraged to continue its good educational work. This Committee might well accelerate its educational efforts towards the industrial physicians and personnel people. Specific attention might be given to the possibilities of making an inventory of cardiac work-evaluation units in the state and other places where employers may secure guidance as to evaluation of jobs and the physical capacity appraisals of candidates for these jobs.

   The Governor's Committee might produce literature and sponsor forums and publicity campaigns to inform employers of the advantage of hiring handicapped workers and of cooperating with the Rehabilitation Commission in rehabilitating the disabled. In certain cases the Commission may pay a portion of a worker's weekly salary if he is receiving on-the-job training while being rehabilitated.

7. The panel is reluctant to recommend any proposals designed to penalize employers who refuse to rehire workers who are injured in their employ. However, the panel did agree that all voluntary methods should be used to encourage the reemployment of such workers.

8. The future dimensions of the changes which will be brought about by automation and other changes now taking place cannot clearly be foreseen. Since the industrial revolution, machines have been substituting for the muscle power of workers. Now automation promises to remove many routine movements from the worker to the machine. The functions which are left may well be adapted to the workers who are physically handicapped.

APPENDIX

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